

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

BEYOND NUCLEAR, INC., <i>et al.</i> ,)	
)	
Petitioners,)	No. 20-1187, consolidated with
)	Nos. 20-1225, 21-1104, and
v.)	21-1147
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents,)	
)	
FASKEN LAND AND MINERALS, et al.,)	
)	
Intervenors)	

JOINT MOTION TO GOVERN

This case involves the issuance by Respondent Nuclear Regulatory Commission (“NRC”) of a license to Intervenor Holtec International to possess spent nuclear fuel at a facility in New Mexico. A panel of this Court issued a decision denying the Petitions for Review on August 27, 2024 (Doc. #2071886).

The case has been in abeyance since November 4, 2024, when the Court suspended consideration of a petition for *en banc* review filed by Petitioner Beyond Nuclear, Inc., pending the outcome of the U.S. Supreme Court’s review in *Nuclear Regulatory Commission v. Texas*, 78 F.4th 827 (5th Cir. 2023), *cert. granted*, No. 23-1300, 145 S.Ct. 177 (U.S. Oct. 4, 2024) (“*Texas*”). *See* Doc.

#2085324 (corrected on Oct. 17, 2024 in Doc. #2080545). This Court placed the case in abeyance based on Beyond Nuclear's assertion, which neither Respondents nor Intervenor contested, that the request for *en banc* consideration would become moot if the Supreme Court ruled in *Texas*, as the Fifth Circuit had held, that the NRC lacked statutory authority to issue a license for a materially identical spent nuclear fuel storage facility in Texas. Doc. #2079676 at 3.

On June 18, 2025, the Supreme Court issued its ruling in *Texas*, 145 S. Ct. 1762, reversing the judgment of the Fifth Circuit. The Court did not rule on, nor was it presented with, the Nuclear Waste Policy Act question regarding spent fuel ownership identified by Beyond Nuclear in its Petition for Review; nor did the Court resolve the issue of whether Congress has authorized the NRC to license away-from-reactor spent fuel storage facilities. Instead, the Court based its decision on a determination that neither petitioner before the Fifth Circuit was a "party aggrieved" within the meaning of 28 U.S.C § 2344. *Id.* at 1776-77.

The parties agree that the issue that Beyond Nuclear raised in its Petition for Review, and for which it seeks *en banc* review, is not moot and is ripe for the Court's consideration. As a consequence, the parties propose that the Court remove the case from abeyance status and proceed to the consider the petition for *en banc* review.

Respectfully submitted,

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July 16, 2025

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure Rule 27(d)(2)(A), I certify that the attached Joint Motion to Govern is proportionately spaced, has a typeface of Times New Roman, 14 points, and contains 346 words. This figure includes footnotes and citations, but excludes the cover page, table of contents, table of authorities, glossary, and signature blocks. I have relied on Microsoft Word's calculation feature for this calculation.

____/signed electronically by/____

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